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*Attorney for Plaintiff TABITHA OLSON and
all others similarly situated*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TABITHA OLSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TOO FACED COSMETICS, LLC, a Delaware
company,

Defendant.

Case No.: 2:20-cv-00485

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff Tabitha Olson brings this class action under the Telephone Consumer Protection Act against Defendant Too Faced Cosmetics, LLC to stop its practice of sending unauthorized text messages promoting its products and services, including sending texts after consumers expressly request that the text messages stop, and to obtain redress for all persons similarly injured by its conduct. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

NATURE OF THE ACTION

1. This case challenges Defendant's practice of sending unauthorized text messages to consumers, including after consumers request that the text messages stop.

2. Defendant's text messages violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, and caused Plaintiff and putative members of the Class to suffer actual harm, including the aggravation, nuisance, loss of time, and invasions of privacy

1 that result from the receipt of such calls, lost value of cellular services paid for, and a
2 loss of the use and enjoyment of their phones, including wear and tear to their phones'
3 data, memory, software, hardware, and battery components, among other harms.

4 3. Accordingly, Plaintiff seeks an injunction requiring Defendant to cease
5 sending unsolicited text messages to consumers, as well as an award of actual and/or
6 statutory damages and costs.

7 **PARTIES**

8 4. Plaintiff Olson is, and at all times relevant to the allegations in the
9 complaint was, a Las Vegas, Nevada resident. Plaintiff received Too Faced Cosmetics'
10 unauthorized text messages while physically located in Las Vegas.

11 5. Defendant Too Faced Cosmetics is a Delaware company headquartered in
12 New York.

13 **JURISDICTION & VENUE**

14 6. This Court has federal question subject matter jurisdiction over this action
15 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
16 Protection Act, 47 U.S.C. § 227 ("TCPA").

17 7. The Court has personal jurisdiction over Defendant and venue is proper in
18 this District because Defendant's unauthorized telemarketing scheme was directed by
19 Defendant to Plaintiff in this District as part of a nationwide text messaging campaign
20 regularly involving text messages to other consumers in this District.

21 **FACTUAL ALLEGATIONS**

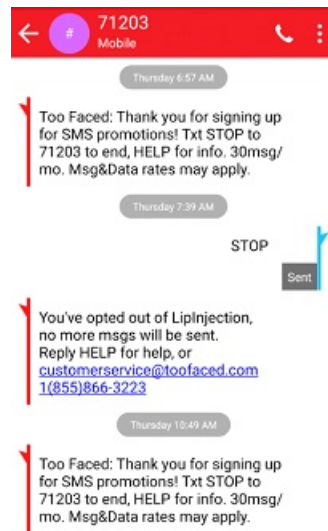
22 8. Defendant is a cosmetics company.

23 9. To increase sales of Too Faced Cosmetics products and services, and as
24 part of a general marketing scheme, Defendant markets its brand using text messages to
25 consumers.

26 10. This case arises from Defendant's unsolicited text messages to Plaintiff and
27 other consumers, including text messages sent after Plaintiff and other consumers
28 expressly requested that Defendant stop texting them.

11. In fact, Plaintiff regularly receives unsolicited marketing texts from Defendant notwithstanding Plaintiff's repeated requests that Defendant stop texting her.

12. For example, on February 14, 2020 at 6:57 am, Defendant sent an unsolicited text message to Plaintiff from short code 71203. Plaintiff responded to the text message less than an hour later by texting "STOP." Notwithstanding, Defendant sent Plaintiff another unsolicited text message the same day, only a few hours later, at 10:49 am:



13. Plaintiff has never provided her consent to Too Faced Cosmetics to send her text messages to her cellular phone number using an automatic telephone dialing system, and even if she had, she subsequently revoked such consent by texting "STOP" in response to many of Defendant's text messages .

14. Defendant's unsolicited texts were a nuisance that aggravated Plaintiff, wasted her time, invaded her privacy, diminished the value of the cellular services she paid for, caused her to temporarily lose the use and enjoyment of her phone, and caused wear and tear to her phone's data, memory, software, hardware, and battery components.

15. In sending the unsolicited text messages at issue, Too Faced Cosmetics, or a third party acting on its behalf, utilized an automatic telephone dialing system; hardware and/or software with the capacity to store or produce cellular telephone

1 number to be called, using a random or sequential number generator, or to dial
2 telephone numbers from preloaded lists. This is evident from the circumstances
3 surrounding the text messages, including the text messages' commercial and generic
4 content, that the text messages were unsolicited, and that they were sent from a short
5 code, which is consistent with the use of an automatic telephone dialing system to send
6 text messages.

7 16. On information and belief, Too Faced Cosmetics, or a third-party acting on
8 its behalf, sent substantively identical unsolicited text messages *en masse* to the cellular
9 telephone numbers of thousands of consumers. This is evident from the text messages'
10 commercial and generic content, that the text messages were unsolicited, and that they
11 were using an automatic telephone dialing system.

12 17. To the extent the text messages were sent on Defendant's behalf to
13 consumers, Defendant provided the third-party access to its records, authorized use of
14 its trade name and devoted short code, otherwise controlled the content of the messages,
15 and knew of, but failed to stop, the sending of the text messages in violation of the
16 TCPA.

17 18. Accordingly, Plaintiff brings this action pursuant to Federal Rules of Civil
18 Procedure 23(b)(2) and 23(b)(3) on behalf of herself and all others similarly situated
19 and seeks certification of the following Class:

20 **ATDS Class:** All persons who, on or after four years prior to the filing of
21 the initial complaint in this action through the date of class certification,
22 (1) were sent a text message to their cellular telephone number by or on
23 behalf of Too Faced Cosmetics, (2) using a dialing system substantially
similar to the dialing system used to text message Plaintiff, (3) for a
substantially similar reason as Defendant texted Plaintiff.

24 19. The following individuals are excluded from the Class: (1) any Judge or
25 Magistrate presiding over this action and members of their families; (2) Defendant, its
26 subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its
27 parents have a controlling interest and their current or former employees, officers and
28 directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely

1 request for exclusion from the Class; (5) the legal representatives, successors or assigns
2 of any such excluded persons; and (6) persons whose claims against Defendant have
3 been fully and finally adjudicated and/or released. Plaintiff anticipates the need to
4 amend the class definitions following appropriate discovery.

5 20. **Numerosity:** The exact size of the Class is unknown and unavailable to
6 Plaintiff at this time, but it is clear that individual joinder is impracticable. On
7 information and belief, Defendant sent unsolicited text messages to thousands of
8 individuals who fall into the Class definition. Class membership can be easily
9 determined from Defendant's records.

10 21. **Typicality:** Plaintiff's claims are typical of the claims of the other
11 members of the Class. Plaintiff is a member of the Class, and if Defendant violated the
12 TCPA with respect to Plaintiff, then it violated the TCPA with respect to the other
13 members of the Class. Plaintiff and the Class sustained the same damages as a result of
14 Defendant's uniform wrongful conduct.

15 22. **Commonality and Predominance:** There are many questions of law
16 and fact common to the claims of Plaintiff and the Class, and those questions
17 predominate over any questions that may affect individual members of the Class.
18 Common questions for the Class include, but are not necessarily limited to the
19 following:

- 20 a) How Defendant gathered, compiled, or obtained the telephone numbers of
21 Plaintiff and the Class;
- 22 b) Whether the text messages were sent using an automatic telephone dialing
23 system;
- 24 c) Whether Defendant's text messages were sent for the purpose of
25 marketing Defendant's restaurants;
- 26 d) Whether Defendant sent some or all of the text messages without the
27 consent of Plaintiff and the Class; and
- 28 e) Whether Defendant's conduct was willful and knowing such that Plaintiff
 and the Class are entitled to treble damages.

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1 23. **Adequate Representation:** Plaintiff will fairly and adequately
2 represent and protect the interests of the Class and has retained counsel competent and
3 experienced in complex class actions. Plaintiff has no interest antagonistic to those of
4 the Class, and Defendant has no defenses unique to Plaintiff.

5 24. **Policies Generally Applicable to the Class:** This class action is
6 appropriate for certification because Defendant has acted or refused to act on grounds
7 generally applicable to the Class as a whole, thereby requiring the Court's imposition of
8 uniform relief to ensure compatible standards of conduct toward the members of the
9 Class, and making final injunctive relief appropriate with respect to the Class as a whole.
10 Defendant's practices challenged herein apply to and affect the members of the Class
11 uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct
12 with respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

13 25. **Superiority:** This case is also appropriate for class certification because
14 class proceedings are superior to all other available methods for the fair and efficient
15 adjudication of this controversy given that joinder of all parties is impracticable. The
16 damages suffered by the individual members of the Class will likely be relatively small,
17 especially given the burden and expense of individual prosecution of the complex
18 litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for
19 the individual members of the Class to obtain effective relief from Defendant's
20 misconduct. Even if members of the Class could sustain such individual litigation, it
21 would still not be preferable to a class action, because individual litigation would
22 increase the delay and expense to all parties due to the complex legal and factual
23 controversies presented in this case. By contrast, a class action presents far fewer
24 management difficulties and provides the benefits of single adjudication, economy of
25 scale, and comprehensive supervision by a single court.

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FIRST CAUSE OF ACTION
Violation of 47 U.S.C. § 227
(On Behalf of Plaintiff and the ATDS Class)

26. Plaintiff repeats and realleges the allegations of paragraphs 1 through 25 of this complaint and incorporates them by reference.

27. Defendant and/or its agents transmitted text messages to cellular telephone numbers belonging to Plaintiff and the other members of the ATDS Class using an automatic telephone dialing system.

28. These solicitation text messages were sent without the consent of Plaintiff and the other members of the ATDS Class.

29. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii), and as a result, under 47 U.S.C. §§ 227(b)(3)(B)-(C), Plaintiff and members of the ATDS Class are entitled to a minimum of \$500 and a maximum \$1,500 in damages for each violation.

JURY TRIAL DEMAND

30. Plaintiff requests a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Olson, individually and on behalf of the Class, prays for the following relief:

a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and her counsel as Class Counsel;

b) An award of actual and/or statutory damages and costs;

c) An order declaring that Defendant's actions, as set out above, violate the TCPA;

d) An injunction requiring Defendant to cease all unsolicited text messaging activity, and to otherwise protect the interests of the Class; and

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1 e) Such further and other relief as the Court deems necessary.

2 Dated: March 9, 2020

3 Respectfully Submitted,

4 LAW OFFICES OF CRAIG B. FRIEDBERG, ESQ.

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